

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 227 OF 2022

**RAJENDRA HIRAMAN KANKUTE
VERSUS
DIKSHA RAJENDRA KANKUTE**

...

Advocate for Applicant : Mr. Choudhari Sushant B

Advocate for Respondent : Mr. A. R. Singh

...

CORAM : KISHORE C. SANT, J.

DATE : 4th OCTOBER 2022.

Per Court :

Heard the parties.

1. The learned Advocate for the Applicant had challenged ex-parte order passed by the learned Judge, Family Court, Aurangabad, allowing Petition No. E-195/2019 that was filed by the Respondent under Section 125 of the Code of Criminal Procedure. By way of judgment and order, the Husband is directed to pay amount of Rs.10,000/- per month from the date of application. The learned Advocate for the Applicant points out from the Roznama that on 29.11.2021, the

Roznama records that the sealed envelope contained notice is returned back and the matter was adjourned for taking further steps. On the next date i.e. 29.12.2022, the Roznama shows that the matter was again adjourned for taking steps. On 28.01.2022, Roznama shows that the Court has passed order to proceed ex-parte against Husband. Thereafter from the Roznama, it is not clear that whether fresh notice was issued or that the report of service was received by the Court. The Court proceeded ex-parte and delivered judgment on 02.05.2022.

2. The Applicant-Husband states that he was never served with the notice of the proceeding. He received the knowledge of the judgment only after when he received notice in execution that is filed by Respondent-Wife. It is only thereafter he has filed this Revision Application. He mainly prays that the matter be remanded to the Family Court by setting aside the ex-parte judgment and order.

3. The learned Advocate for the Respondent could not point out that the service was effected. He pointed out from Paragraph No.3 & 4 at Page No. 27 of the paper book that the learned Court below has

recorded that the notice is served and in spite of service of notice he has not appeared before this Court. However he could not point out as to on what basis to the learned Court below recorded these findings. Neither there is any observation in the judgment to show that the service of notice was in fact effected upon the Husband.

4. Looking to the facts and in view of the above discussion, it would be in the interest of justice to quash and set aside the impugned order dated 02.05.2022 passed by the learned Judge, Family Court, Aurangabad in Petition No. E-195/2019. However it is necessary to put following condition upon the Husband.

(i) The Husband shall deposit Rs.5,000/- per month to Wife-Respondent and shall also deposit Rs.10,000/- towards the costs of the proceedings, since the matter is remanded.

(ii) The amount deposited in this Court of Rs.1 Lakh towards arrears of maintenance be remitted to the Family Court, the Wife is at liberty to withdraw the amount of Rs.1 Lakh from that Court.

5. Subject to above condition, the matter is remanded back to the

Family Court, Aurangabad. It is expected from the parties to co-operate in the proceeding.

6. Learned Family Court to decide the application after remand as expeditiously as possible.

7. The Criminal Revision Application is disposed off.

[KISHORE C. SANT, J.]

Najeeb.